

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

NATHAN SINGER, M.D., RESPONDENT

FILE No. 02-11-567

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

Date: February 13, 2014.

On September 26, 2013, the Iowa Board of Medicine (Board) found probable cause to file a Statement of Charges against Nathan B. Singer, M.D. (Respondent). Respondent was charged with having a license to practice medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory or country, in violation of Iowa Code section 148.6(2)(d) and 653 IAC 23.1(1). A hearing was scheduled for December 19, 2013. The hearing has since been continued to February 20, 2014.

On December 10, 2013, Respondent filed a Motion to Dismiss the Statement of Charges. The state filed a written Response on December 26, 2013, and the Board scheduled the motion for argument on January 23, 2014. The following members of the Board presided at the motion hearing: Gregory Hoversten, D.O., Chairperson; Hamed Tewfik, M.D.; Michael Thompson, D.O.; Julie Carmody, M.D.; Julie Perkins, M.D.; Allison Schoenfelder, M.D.; Monsignor Frank Bognanno and Ann Gales, Public Members. Respondent was represented by attorney Michael Sellers. The state was represented by Assistant Attorney General Julie Bussanmas. Administrative Law Judge Margaret LaMarche assisted the Board and prepared the Board's Order, as directed by the Board during deliberations.

The following facts are asserted in the Statement of Charges:

Respondent was issued Iowa medical license no. 24968 on July 1, 1985.
Respondent's Iowa medical license went inactive due to nonrenewal on

September 1, 2002. Respondent currently practices anesthesia and internal medicine in Santa Maria, California. On or about July 28, 2011, Respondent and the Medical Board of California (California Board) entered into a Stipulated Settlement and Disciplinary Order. The California Board alleged that Respondent prescribed excessive opioids, including refills, to two patients between 2003 and 2008 without performing and/or documentation appropriate physical examinations, without properly monitoring the patients and without maintaining adequate medical records. The California Board placed Respondent on probation for a period of two years and eleven months. Respondent was ordered to complete additional continuing medical education for appropriate prescribing and medical record keeping. Respondent was also prohibited from supervising physician assistants during the period of probation.

The Motion to Dismiss states that with the exception of a three year medical residency in New Jersey and a three year residency in anesthesiology in New York, all of Respondent's years of medical practice have been in California. Respondent is a resident of the state of California and has never resided in the state of Iowa. The only time that Respondent has been present in the state of Iowa prior to the issuance of the Board's Statement of Charges was for the two days in 1985 when Respondent took Iowa's medical competency test. The Motion to Dismiss states that Respondent's Iowa license expired more than 12 years ago, and Respondent is currently prohibited from practicing medicine in the state of Iowa. The Motion to Dismiss also asserts that Respondent will never practice medicine in Iowa. The Motion to Dismiss asserts that the Board should dismiss its charges against Respondent because: 1) Respondent has never resided in Iowa, has never practiced in Iowa, and never intends to practice in Iowa; 2) Respondent's Iowa license has been inactive due to nonrenewal since 2002 and he is prohibited from practicing in this state; and 3) the Board has had a published policy that permitted the Board to choose not to file formal disciplinary action in out-of-state disciplinary cases under circumstances similar to those in this case.

In its Response to the Motion to Dismiss, the state cites to three decisions of the Iowa Court of Appeals, all of which have upheld the Board's authority to discipline inactive licensees. *Lyons v. Iowa Board of Medical Examiners*, No. 08-1538, 2009 WL 1677149, *3 (Iowa Ct. App. June 17, 2009); *Doe v. Iowa Board of Medical Examiners*, Nos. 07-0332, 08-0064, 2009 WL 249972, *5-6 (Iowa Ct. App. Feb. 4, 2009); *Imber v. Iowa Board of Medical Examiners*, No. 06-0493, 2007 WL 601544, *3-4 (Iowa Ct. App. Feb. 28, 2007) *See also*, *State v. Otterholt*, 234 Iowa 1286, 15 N.W. 2d 529, 532 (Iowa 1944) (noting that a professional license cannot be taken away without due process and that "the mere failure to renew annually does not lessen the value of that license). It is clear that the Board has jurisdiction to take disciplinary action against a physician with an inactive Iowa medical license.

The Board had a previous long term policy, which was first implemented in 2002 and which was later posted on the Board's website, which stated that the Board:

...*may* choose not to file formal disciplinary action in out-of-state disciplinary cases because there is not an immediate threat to the public when the physician does not have an active Iowa medical license, has not recently resided and/or practiced in Iowa, and that action taken by the other medical board is public record. However, the board reserves the right to file formal charges in the future if the physician returns to practice medicine in Iowa. The board also reserves the right to file formal charges in such cases if it concludes that the physician has engaged in serious misconduct and/or there appears to be potential harm to the public.

(emphasis supplied). The Board notes that while this policy remained on its website until sometime in 2013, the policy has now been removed from the website and is no longer a published policy of the Board. The policy was purely permissive in nature, was never promulgated as a rule, and did not require or mandate a particular result.

The Board initially filed charges against Respondent based on its concerns about the nature and seriousness of the alleged violations in California, which related to inappropriate prescribing of pain medications for two patients over a period of five years, and based on the disciplinary action that was taken against Respondent through the stipulated settlement. Upon further review of the specific circumstances of this case, however, the Board has decided to dismiss the Statement of Charges without prejudice. This decision is largely based on the following: Respondent has never resided in Iowa, has never practiced medicine in Iowa, and has represented to the Board that he will never practice medicine in Iowa. If Respondent should choose to reactivate his Iowa medical license at any time in the future, however, the Board reserves the right to re-file the Statement of Charges.

IT IS THEREFORE ORDERED that the Statement of Charges filed against Respondent on September 26, 2013 is hereby **DISMISSED** without prejudice.

DATED THIS 13th DAY OF FEBRUARY, 2014.

A handwritten signature in black ink, appearing to read "G. Hoversten".

Gregory B. Hoversten, D.O., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686

cc: Michael Sellers, Respondent's Attorney
Julie Bussanmas, Assistant Attorney General

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

NATHAN SINGER, M.D., RESPONDENT

FILE No. 02-11-567

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on September 26, 2013, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 24968 on July 1, 1985. Respondent's Iowa medical license went inactive due to nonrenewal on September 1, 2002.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on December 19, 2013, before the Iowa Board of Medicine. The hearing shall begin at 1:00 p.m. and shall be located in the conference room at the Iowa Board of Medicine office at 400 SW 8th Street, Suite C, Des Moines, Iowa.

2. Answer. Within twenty (20) days of the date you are served this Notice of Hearing you are required by 653 Iowa Administrative Code 25.10 to file an Answer. In that Answer, you should also state whether you will require a continuance of the date and time of the hearing.

3. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

4. Prehearing Conference. A prehearing conference will be held by telephone on October 16, 2013, at 9:00 a.m., before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (ALJ). Please contact Kent M. Nebel, J.D., Legal Director, Iowa Board of Medicine, at 515-281-7088 with the telephone number at which you or your legal counsel can be reached. Board rules on prehearing conferences may be found at 653 Iowa Administrative Code 25.15.

5. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 Iowa Administrative Code Chapter 25. At hearing, you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. If you need to request an alternative time or date for hearing, you must review the requirements in 653 Iowa Administrative Code 25.16. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

6. Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Julie Bussanmas, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

7. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may contact Kent M. Nebel, J.D., Legal Director, at 515-281-7088 or to Assistant Attorney General Julie Bussanmas at 515-281-5637.

B. LEGAL AUTHORITY AND JURISDICTION

8. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 147, 148, and 272C.

9. Legal Authority: If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 148, and 272C (2005) and 653 Iowa Administrative Code Chapter 25.25.

10. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 653 Iowa Administrative Code 25.20.

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

11. **Discipline by Another Licensing Authority:** Respondent is charged pursuant to Iowa Code section 148.6(2)(d) and 653 IAC 23.1(1) with having a license to practice medicine and surgery or osteopathic medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the order of disciplinary action is prima facie evidence.

STATEMENT OF THE MATTERS ASSERTED

12. Respondent is an Iowa-licensed physician who currently practices anesthesia and internal medicine in Santa Maria, California.

13. **California Disciplinary Action:** On or about July 28, 2011, Respondent entered into a Stipulated Settlement and Disciplinary Order with the Medical Board of California (California Board). The California Board alleged that Respondent prescribed excessive opioids, including refills, to two patients between 2003 and 2008 without performing and/or documenting appropriate physical examinations, without properly monitoring the patients and without maintaining adequate medical records. The California Board placed Respondent on probation for a period of two years and eleven months. Respondent was ordered to complete additional continuing medical education for appropriate prescribing and medical record keeping. Respondent was prohibited from supervising physician assistants during the period of probation.

E. SETTLEMENT

14. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 Iowa Administrative Code 12.25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088.

F. PROBABLE CAUSE FINDING

15. On September 26, 2013, the Iowa Board of Medicine found probable cause to file this Statement of Charges.

A handwritten signature in black ink, appearing to read "G. Hoversten".

Gregory B. Hoversten, D.O., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686